



General Statutes Commission

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: Legislative Commission on the Fair Treatment of College Student-Athletes
From: David Unwin, Staff Attorney to the General Statutes Commission
Re: Revised Uniform Athlete Agents Act
Date: January 7, 2019

General Comments

This bill draft is based on the Revised Uniform Athlete Agents Act (RUAAA) that was approved in 2015 by the Uniform Law Commission; the draft modifies RUAAA by making some expansions and statutory drafting style changes. The draft replaces the Uniform Athlete Agents Act (UAAA), enacted by S.L. 2003-375 as Article 9 of Chapter 78C of the General Statutes, with a modified version of RUAAA. The Secretary of State currently administers Article 9, and the draft continues the Secretary of State's regulatory role. The draft is virtually identical to House Bill 230, 2017 Regular Session, which was recommended by the General Statutes Commission, except that it makes two changes requested by N.C. State University (NCU).

Like UAAA, RUAAA is designed to protect student athletes and educational institutions from the unscrupulous practices of some athlete agents who seek to represent the student athletes in negotiating professional-sports-services contracts and endorsement contracts. Some athlete agents engage in the practice of giving large gifts to student athletes or the student athletes' friends or relatives to induce the student athletes to enter into agency contracts with very unfavorable terms. Many student athletes have been harmed by these athlete agents' dishonest practices.

These practices also harm educational institutions. When a student athlete (i) enters into an agency contract, (ii) promises to do so in the future, or (iii) accepts anything of value from an athlete agent, the student athlete loses his or her eligibility to play in an interscholastic or intercollegiate sport. If an educational institution unwittingly allows a student athlete to continue to play after he or she has entered into an agency contract, the educational institution may be subject to sanctions from the National Collegiate Athletic Association (NCAA) and may also suffer significant reputational harm.

For example, in 2017, Terry Watson, an athlete agent, "acknowledged giving nearly \$24,000 in cash, airline tickets or hotel rooms to [Marvin] Austin, as well as former [University of North Carolina] football players Greg Little and Robert Quinn, to get them to sign with his agency while they were still college players."¹ Mr. Watson, one of the five people charged in this scandal, pleaded guilty to felony charges. The University of North Carolina suffered a bowl ban, a loss of 15 scholarships over three seasons, three years' probation, a \$50,000 fine, and the forfeiture of all victories from the 2008 and 2009 seasons.

As an additional example, a recent two-year investigation by the Federal Bureau of Investigation has led to a pending criminal prosecution by the U.S. Attorney for the Southern District of New York in which the following schemes have been alleged: "One scheme involved

¹ *Agent pleads guilty to giving money to UNC football players*, The News and Observer, Anne Blythe, April 17, 2017, available at: <http://www.newsobserver.com/sports/college/acc/unc/article145007249.html>

paying [basketball] players or their family members to ensure they would attend schools sponsored by [A]didas and then sign with the apparel company upon going pro. The other involved paying coaches to influence players on which professional sports agents to choose after turning pro."² On October 2, 2018, Jim Gatto, an Adidas executive, admitted that "he paid the family of Dennis Smith Jr. \$40,000 to ensure that [Mr. Smith Jr.] played at N.C. State [University]."³

Current law based on the UAAA addresses these problems by (i) requiring that all athlete agents register with the Secretary of State before seeking to represent student athletes, (ii) providing a student athlete with a statutory right to cancel an agency contract within 14 days of signing the contract, (iii) requiring the athlete agent and the student athlete to give notice of an agency contract to the educational institution, (iv) providing an educational institution with a statutory right of action against an athlete agent, (v) establishing a civil penalty, and (vi) criminalizing the practice of an athlete agent deceiving a student athlete or offering an improper inducement to a student athlete to enter into an agency contract.

RUAAA expands UAAA's protections by (i) requiring an athlete agent to notify the educational institution before contacting a student athlete, and (ii) providing a student athlete with a statutory right of action against an athlete agent. RUAAA also offers two alternative registration processes for a state to enact: (i) an in-state registration process, or (ii) an interstate compact for registration.

This bill draft expands RUAAA's protections by (i) extending the protections to former student athletes who have exhausted their eligibility to compete as student athletes within the past six months, (ii) requiring an athlete agent to notify the educational institution if the athlete agent knows or should have known of a violation of RUAAA that could render a student athlete ineligible to play in an interscholastic or intercollegiate sport, (iii) adding new criminal penalties and increasing the existing criminal penalties, and (iv) increasing the maximum amount of the existing civil penalty. After consultation with interested parties, the General Statutes Commission recommends that this State continue the in-state registration process, instead of the interstate compact for registration. This bill draft also removes the reciprocal registration process in current law; all athlete agents seeking to represent student athletes in North Carolina would be required to use North Carolina's registration application.

The University of North Carolina Athletic Director's Office and the Department of the Secretary of State participated in the drafting of House Bill 230, the bill on which this draft is based. A draft was circulated to the North Carolina High School Athletic Association and the Sports and Entertainment Law Section of the N.C. Bar Association. Drafts were published on the General Statutes Commission's website.

The two new changes requested by NCSU are as follows:

- In the definition of "athlete agent", this bill draft elaborates on the scope of the phrase "indirectly recruits or solicits" by listing a non-exclusive group of people through whom an individual's attempt to influence a student athlete to enter into an agency contract qualifies as indirectly recruiting or soliciting a student athlete.
- This bill draft fills a gap in the regulatory framework by recognizing that under the NCAA bylaws, a student athlete who enters into a verbal agency contract or makes

² *Here's a master guide to the college basketball corruption scandal and FBI investigation*, The News and Observer, Aaron Moody, October 4, 2018, available at: <https://www.newsobserver.com/sports/article208880939.html>

³ *Id.*

a verbal commitment to enter into an agency contract in the future will lose his or her eligibility to compete as a student athlete.

The General Statutes Commission has not yet reviewed these two changes.

South Carolina, Tennessee, Alabama, and Kentucky, as well as eight other states, have enacted RUAAA.

Specific Comments

Section 1 repeals UAAA, as codified in Article 9 of Chapter 78C of the General Statutes.

Section 2 adds a modified version of RUAAA as new Article 10 of Chapter 78C of the General Statutes, consisting of §§ 78C-111 through 78C-130:

§ 78C-111 provides a short title (Revised Uniform Athlete Agents Act).

§ 78C-112 defines terms used in the Article, including the following key terms:

- "Athlete agent" has a definition that elaborates on the current UAAA definition of "athlete agent," which is very broad. The Uniform Law Commission revised the definition to provide additional specificity. The term includes, among other individuals, an individual, whether or not registered under the Article, who directly or indirectly recruits or solicits a covered athlete to enter into an agency contract. A change requested by NCSU is the listing of a non-exclusive group of people through whom an individual's attempt to influence a covered athlete to enter into an agency contract qualifies as indirectly recruiting or soliciting a covered athlete.
- "Covered athlete" is a new defined term added by the General Statutes Commission that includes a student athlete or a former student athlete.
- "Former student athlete" is a new defined term added by the General Statutes Commission that includes (i) an individual who entered into an agency contract but who would otherwise be eligible to compete as a student athlete, and (ii) an individual who exhausted his or her eligibility within the past six months. The General Statutes Commission added the first category to clarify that this bill draft's protections do not immediately terminate once a student athlete enters into an agency contract, a result RUAAA's drafters intended. The General Statutes Commission added the second category upon the recommendation of the University of North Carolina Athletic Director's Office. A change requested by NCSU is the expansion of the definition to include an individual who made a commitment to enter into an agency contract in the future but who would otherwise be eligible to compete as a student athlete.
- "Student athlete" has a definition consistent with current law. The term includes an individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport.

§ 78C-113 continues the Secretary of State's authority to adopt rules and to issue a subpoena for material relevant to the administration of the Article.

§ 78C-114 continues the requirement that an athlete agent register with the Secretary of State and the provision that declares void an agency contract made by an athlete agent who fails to register.

§ 78C-115 expands the information that an athlete agent must disclose in a registration application, including, for example, (i) whether the athlete agent has been a defendant in a civil proceeding within the past 15 years, (ii) whether the athlete agent has an unsatisfied judgment or a judgment of continuing effect, and (iii) whether the athlete agent has filed bankruptcy within the past 10 years. The Secretary of State may also require additional information.

§ 78C-116 continues to allow the Secretary of State to refuse to issue a certificate of registration to an athlete agent who has engaged in misconduct. A certificate of registration is valid for one year; an athlete agent may apply to renew the athlete agent's registration.

§ 78C-117 continues to allow the Secretary of State to suspend, revoke, or refuse to renew an athlete agent's registration; § 78C-117, however, expands this authority by allowing the Secretary of State to take these actions for any violation of the Article or rules adopted under it.

§ 78C-118 continues to allow the Secretary of State to issue a temporary certificate of registration.

§ 78C-119 continues to provide for application fees and does not change the amounts in current law. § 78C-119 removes the existing fees for applications pursuant to the reciprocal registration process, because this bill draft removes the reciprocal registration process in current law.

§ 78C-120 continues to require that an agency contract be in writing, whether in print or electronic form, and contain the amount and method of calculating the consideration that the covered athlete will pay under the contract, the name of any person not listed in the athlete agent's application for registration that will be paid under the agency contract, and a conspicuous notice warning of possible loss of eligibility to compete as a student athlete. RUAAA adds the requirement that the agency contract contain a statement that the athlete agent is registered in this State and a list of any other states in which the athlete agent is registered or licensed. RUAAA continues to allow a covered athlete to void an agency contract that violates these requirements.

§ 78C-121 continues the requirement that the athlete agent and the covered athlete notify the educational institution of the existence of an agency contract within 72 hours of entering into the agency contract or before the next scheduled athletic event in which the covered athlete may participate, whichever occurs first. RUAAA adds the following notice requirements:

- If an athlete agent and a covered athlete have a relationship or an agency contract before the covered athlete enrolls in an educational institution, the athlete agent must notify the educational institution.
- The athlete agent must notify the educational institution before attempting to contact a covered athlete or if a covered athlete attempts to contact the athlete agent.
- The educational institution must notify the Secretary of State when it becomes aware of a violation of the Article.

The General Statutes Commission added the requirement that the athlete agent notify the educational institution if the athlete agent knows or should have known of a violation of the Article that could render a covered athlete ineligible to compete as a student athlete. A change requested by NCSU is the addition of the requirement that an athlete agent and a covered athlete notify the

educational institution of the existence of a verbal agency contract or a verbal commitment to enter into an agency contract in the future.

§ **78C-122** continues for covered athletes the nonwaivable right to cancel an agency contract within 14 days of signing the contract.

§ **78C-123** continues the requirement that an athlete agent retain the athlete agent's records for five years and allows the Secretary of State to inspect the records.

§§ **78C-124 and 78C-125** continue to criminally prohibit the following actions by an athlete agent intending to induce a covered athlete to enter into an agency contract:

- Giving materially false or misleading information or making a materially false promise or representation.
- Furnishing anything of value to the covered athlete or to an individual other than another registered athlete agent.

§§ 78C-124 and 78C-125 increase the punishment for these offenses from a Class I felony to a Class H felony, provide that an unregistered athlete agent's initiation of contact with a covered athlete is also a Class H felony, and add as Class 1 misdemeanors an athlete agent's (i) failing to retain records, (ii) failing to register, (iii) providing false or misleading information in an application for registration, (iv) predating or postdating an agency contract, and (v) failing to notify a covered athlete before the covered athlete enters into an agency contract that the agency contract may render the covered athlete ineligible to compete as a student athlete.

A change requested by NCSU is the addition of the following as a Class 1 misdemeanor: an athlete agent's failure to notify a covered athlete before the covered athlete enters into a verbal agency contract or makes a verbal commitment to enter into an agency contract in the future that the verbal agency contract or verbal commitment may render the covered athlete ineligible to compete as a student athlete. Another change requested by NCSU is the prohibition of an athlete agent's entering into a verbal agency contract or seeking or accepting from a covered athlete a verbal commitment to enter into an agency contract in the future.

§ **78C-126** continues the statutory right of action by an educational institution against an athlete agent. § 78C-126 removes an educational institution's right of action against a former student athlete but gives to a covered athlete a right of action against an athlete agent. § 78C-126 provides that a violation of the Article is an unfair or deceptive trade practice and that a plaintiff may recover actual damages and costs and any other remedies, including attorneys' fees, provided under Chapter 75 of the General Statutes.

§ **78C-127** continues to allow the Secretary of State to assess a civil penalty but increases the maximum amount from \$25,000 to \$250,000 or the amount of consideration the athlete agent received, whichever is greater, and lists several factors for the Secretary of State to consider in making this assessment.

§ **78C-128** is reserved for future codification.

§§ **78C-129 and 78C-130** are standard Uniform Act provisions relating to uniformity of application and to the federal E-SIGN act.

Section 3 is a severability provision, and **Section 4** authorizes the printing of official and drafters' comments.

Section 5 provides that this act becomes effective December 1, 2019, and applies to acts and omissions occurring on or after that date.